

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION**

GEORGIA PACIFIC CONSUMER )  
PRODUCTS LP, FORT JAMES )  
CORPORATION, and )  
GEORGIA-PACIFIC LLC )

Plaintiffs, )

v. )

NCR CORPORATION )  
and )  
INTERNATIONAL PAPER CO., )

Defendants. )

Civil Action No. 10-CV-01087

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**MOTION TO DISMISS**

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Pursuant to Federal Rule of Civil Procedure 12(b)(6), defendant International Paper Company (“International Paper”) respectfully moves this Court to dismiss plaintiffs Georgia-Pacific Consumer Products LP, Fort James Corporation, and Georgia-Pacific LLC’s (collectively, “Georgia-Pacific”) Fourth Cause of Action for cost recovery under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”).

Georgia-Pacific’s Fourth Cause of Action should be dismissed because CERCLA does not permit parties in Georgia-Pacific’s procedural position to assert a claim under both Section 107 and Section 113 of CERCLA. Here, Georgia-Pacific’s claims, if any, lie in contribution under only CERCLA Section 113.

Georgia-Pacific’s Complaint shows that it incurred costs involuntarily, pursuant to government compulsion in the form of a Consent Decree, Administrative Orders on Consent

(“AOCs”), and a civil action. As a result, Georgia-Pacific seeks to recover costs that: (1) it has been required to incur and to reimburse to government agencies; and (2) it has allegedly incurred and will incur in excess of its fair share. Thus, Georgia-Pacific’s claim is one for contribution under Section 113, not cost recovery under Section 107.

The grounds for this Motion are set forth in more detail in Defendant International Paper’s Memorandum in Support of its Motion to Dismiss, which is filed and served concurrently with this Motion in accordance with the Local Rules.

March 4, 2011

Respectfully submitted,

**INTERNATIONAL PAPER COMPANY**

s/ R Raymond Rothman

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